

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JOHN FIFE,	)	
	)	
	)	
	Plaintiff,	
v.	)	Case No: 07 C 6681
	)	
ALEX HAZAN,	)	Honorable Charles P. Korocas
	)	Magistrate Judge Denlow
	Defendant.	
	)	
	)	
	)	

**PLAINTIFF’S BRIEF RELATING TO DAMAGES, COSTS AND FEES FOR  
ENTRY OF FINAL JUDGMENT AGAINST DEFENDANT**

Plaintiff John Fife (“Plaintiff” or “Fife”), by and through his attorneys, Wildman, Harrold, Allen & Dixon LLP, and pursuant to Federal Rule of Civil Procedure 55(b)(2), hereby submits proof of damages, costs, and attorneys’ fees in advance of the prove-up hearing on March 19, 2008, and in support of entry of final judgment against the Defendant, Alex Hazan, (“Defendant” or “Hazan”), as follows:

**BACKGROUND**

1. On November 28, 2007, Plaintiff filed his Complaint against Hazan relating to Hazan’s default under the “Series 2007 Secured Original Issue Discount Note Due November 13, 2007” (“Promissory Note”), and his failure to reimburse the Plaintiff for amounts due and owing. (Complaint (Docket No. 1); Ex. A, Promissory Note; Ex. B, Stock Pledge Agreement.)

2. Pursuant to Rule 4(d) of the Federal Rules of Civil Procedure, counsel for the Plaintiff notified Hazan by certified mail of the pending lawsuit and formally requested that Hazan waive service in this matter. (See Motion for Default Judgment

(Docket No. 11), Ex. B, Letter dated November 29, 2007.) Hazan's wife, Cheryl Hazan, received and signed for the letter on December 1, 2007. Hazan failed to return the waiver of service to counsel. *See* Fed. R. Civ. P. 4(d)(1)(F).

3. Hazan was served with the Complaint on January 14, 2008 by substituted service, but has failed to enter an appearance or respond to the Complaint. (Return of Service (Docket No. 9).)

4. On February 8, 2008, Fife had filed his Motion for Default Judgment against Hazan, which the Court granted on or about February 20, 2008. The Court then set a prove-up hearing to determine damages for March 19, 2008.

### **ARGUMENT**

5. Fife is entitled to damages, costs, and attorneys' fees due to Hazan's default under the Promissory Note. Hazan has defaulted under the Promissory Note and refused to pay Fife for the outstanding maturity amount under the note, which became due on June 20, 2007. (Compl. ¶¶ 24-40; Ex. A, Promissory Note.) Fife, therefore, commenced the sale of stock in Royal Spring Water, Inc. – stock that Hazan pledged as collateral to secure his promise to pay under the Promissory Note. (Affidavit of John Fife ("Fife Aff.") ¶¶ 10, 20-21.)

6. Despite Fife's sale of the Royal Spring Water, Inc. stock, a shortfall of \$100,304.38 still remains, which Hazan still owes to Fife. (Ex. A, Promissory Note §§ 4, 8; Fife Aff. ¶¶ 10, 20-21.)

7. Fife may also collect interest from Hazan on the outstanding maturity amount. Under the Promissory Note, default interest of eighteen percent per annum began accruing on any outstanding maturity amount on or about June 20, 2007, and

continues to accrue to this day. (Ex. A, Promissory Note §§ 4; Fife Aff. ¶¶ 9, 22.) As of March 19, 2007, the default interest will be \$31,700.41. (Fife Aff. ¶ 22; Ex. C, Spreadsheet Calculating Interest through March 19, 2008.)

8. Accordingly, Fife is entitled to damages of \$132,854.79, inclusive of interest.

9. Finally, Fife can recover his attorneys' fees and costs in this matter from Hazan due to his breach of the Promissory Note. Hazan agreed under the Promissory Note he would pay Plaintiff's his attorneys' fees and costs incurred in pursuit of this action. (Fife Aff. ¶ 13; Affidavit of E. Timothy Walker ("Walker Aff.") ¶¶ 3-4.) The Note provides that, in the event of a default by Hazan, Fife is entitled to "any reasonable legal fee and disbursements incurred by [Fife] in the enforcement or protection of any of his rights under any of this Note." (Ex. A, Promissory Note ¶ 10(e).) As of the date of this submission, Fife has incurred \$9,218.75 in attorneys' fees from the work of the undersigned firm through March 7, 2008, and \$850.00 from the Logan Law Firm relating to the enforcement of the Promissory Note through various notices of default. (Walker Aff. ¶ 5; Ex. D, Invoice.)

10. Fife has also incurred \$1,098.90 in disbursements through March 7, 2008 for the costs of filing the Complaint, the costs of service, and other costs incurred during the enforcement of the Promissory Note. (Walker Aff., Ex. 1)

11. Fife is also entitled to its costs pursuant to Rule 54(d)(1) of the Federal Rules of Civil Procedure. Hazan's failure to comply with the request for waiver of service mandates that the Court award Fife the costs of effecting service on Hazan, and any attorneys' fees incurred in securing these costs. Fed. R. Civ. P. 4(d)(2).

12. Fife, therefore, is entitled to a final judgment against Hazan in the amount of \$143,172.44, plus any other attorneys fees and costs incurred through the hearing on March 19, 2008, broken down as follows,

<b><u>DAMAGES, FEES AND COSTS</u></b>	<b><u>AMOUNT</u></b>
Principal Amount Outstanding under Promissory Note	\$100,304.38
Interest on Outstanding Maturity Amount (computed at 18% per annum since June 20, 2007 through March 19, 2008)	\$31,700.41
Attorneys' fees from Wildman, Harrold, Allen & Dixon, LLP (through March 7, 2008)	\$9,218.75
Attorneys' fees and costs billed by Logan Law Firm	\$850.00
Costs through March 7, 2008, including filing fees and costs of service	\$1,098.90
<b><u>TOTAL</u></b>	\$143,172.44

13. There is no just reason for delay, and judgment should enter immediately against Hazan for the amount requested.

WHEREFORE, there being no jury reason for delay, Plaintiff John Fife, respectfully requests that this Court enter an Order of judgment against Defendant Alex Hazan in the amount of \$143,172.44, plus any other attorneys fees and costs incurred through the hearing on March 19, 2008.

Dated: March 13, 2008.

JOHN FIFE

By: /s/ E. Timothy Walker  
One of the Attorneys for John Fife

Craig M. White, Esq. (#2999668)  
E. Timothy Walker, Esq. (#6294608)  
Wildman, Harrold, Allen & Dixon, LLP  
225 West Wacker Drive, Suite 2800  
Chicago, Illinois 60606-1229  
(312) 201-2000